

Missouri Essay Question 1
February 2002 Bar Examination
Family Law

The marriage of Frank and Mary was dissolved by a valid Judgment of the Circuit Court of Cole County, Missouri on June 1, 1995. Both Frank and Mary lived in Jefferson City on that date. The Dissolution of Marriage Judgment incorporated and ordered the parties to perform all of the provisions contained in a Parenting Plan related to their son, Sam, who was seven years old at the time. Pursuant to the Parenting Plan the parties shared the joint legal custody of Sam; Mary was named his primary physical custodian and Frank was to have temporary custody of Sam during the school year on alternating weekends and on each Wednesday from the time school was out until the next morning when school recommenced and every other two weeks during the summer. Mary was required to deliver Sam to Frank at Frank's residence at the beginning of Frank's period of temporary custody and Frank was to return Sam to Mary's residence at the conclusion of his period of temporary custody. The Parenting Plan further provided that Sam's address for educational purposes would be Mary's address in Jefferson City, Missouri.

Concerned that the dissolution of marriage would have a negative impact on Sam, both Frank and Mary worked diligently at their parental responsibilities. Frank coached Sam's mighty mite football team each year. During the summer Frank would schedule his four weeks of vacation from work so that they would fall during his two-week periods with Sam. Frank coached every summer baseball team that Sam had ever played on. Every time Frank and Sam were together it was like listening to Sports Center on ESPN. They shared their enthusiasm for sports. Sam's seventh grade football coach commented to Frank one day after a game that if Sam continued to work hard he had the natural talent to be a starter on the Jefferson City Jays football team when he got in high school.

Meanwhile Mary assisted Sam with his budding musical talent. She arranged and paid for weekly violin lessons. Almost every day she worked with Sam for at least an hour encouraging and helping him practice his violin. Mary and Sam would make regular trips to Kansas City and St. Louis to listen to the symphonies in those cities. All the practice paid off and by the time Sam was in the seventh grade he was becoming well known around the Jefferson City area as an accomplished violinist. Music seemed to be all that Mary and Sam could talk about. Sam shared with Mary his goal of playing in a symphony orchestra someday.

During Sam's seventh grade year, Mary met Bob, quickly fell in love and they were married. A couple of months later, on June 1, 2001, Bob received notice from his employer that he was being transferred to a job in Albuquerque, New Mexico and would receive a \$10,000.00 a year raise in salary. Mary being the diligent parent that she is gets on the web and checks out the music scene in Albuquerque. She is so excited and can't wait to tell Sam about the outstanding award winning string program for young violinists sponsored by the Albuquerque Symphony Orchestra. As a result of this program she determines that the Albuquerque Youth Symphony is one of the few youth symphonies in the nation that tours each year both nationally and internationally.

Question 1 (30%): On June 15, 2001 Mary keeps her appointment with you as her attorney. Mary informs you of the above facts and asks you what steps she needs to take to move Sam to Albuquerque so that he can start school on August 20, 2001. What do you tell Mary?

Question 2 (10%): After you tell Mary the steps that she must take, she asks you what steps Frank might take to block her move of Sam to Albuquerque. What do you tell her?

Question 3 (20%): Assuming that Mary takes the steps you propose in your answer to Question 1 and that Frank takes the steps you tell her about in your answer to Question 2, what is the test the Court will apply in resolving the dispute?

Question 4 (20%): In applying the test set forth in your answer to Question 3, what facts will each party urge upon the Court?

Question 5 (10%): Assuming that Frank refuses to consent to the relocation of Sam's residence to Albuquerque, but does not take any action to block the relocation, what is the earliest date that Mary can relocate Sam's residence to Albuquerque?

Question 6 (10%): Assuming that Frank refuses to consent to the relocation of Sam's residence to Albuquerque and takes every step legally available to him to block his relocation what is the earliest date that Mary can relocate Sam's residence to Albuquerque?

Missouri Essay Question 2
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Missouri Civil Procedure

On October 22, 1988, Paul Plaintiff slips and falls in Shopmart and injures himself. He gets a lawyer and files a lawsuit for personal injuries against Shopmart. He files his case on October 22, 1992 in circuit court in St. Louis County. You represent Shopmart and you timely file an answer. On November 4, 1994, Paul Plaintiff files a voluntary dismissal without prejudice with the circuit court clerk's office. In January 1995, the circuit court clerk's office sends to all parties a notice of trial setting in the case. On February 17, 1995, Paul Plaintiff files another voluntary dismissal without prejudice with the circuit court clerk's office. The circuit court clerk's office sends another notice of trial setting in the case on February 20, 1995. Thereafter, Paul Plaintiff files a third voluntary dismissal with the circuit court clerk's office on March 27, 1995. The March 27, 1995 dismissal without prejudice is signed "so ordered" by the court. Thereafter, Paul Plaintiff refiles his suit against Shopmart on March 22, 1996 in Boone County, Missouri.

1. Is the Boone County case timely filed? Why or why not?

You decide to conduct discovery in the case in anticipation of filing a motion for summary judgment asserting that Paul Plaintiff's case is barred by the statute of limitations.

2. Name and describe three methods of discovery you can utilize in order to posture your case for a future motion for summary judgment.
3. What is the standard the trial court should use in determining whether summary judgment is warranted on your client's behalf?
4. If the trial court denies your motion for summary judgment can you appeal the trial court's decision? Why or why not?
5. You decide not to appeal but you want to seek other relief from the court of appeals. What procedures can you utilize and what is the standard to obtain this relief?

Missouri Essay Question 3
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Administrative Law

On December 9, 2000, Patient Heart went to see Dr. Bad complaining of sharp pains in his back radiating into his hands. Patient Heart told Dr. Bad that he had been helping to remodel his church when the symptoms came on. Dr. Bad ordered blood tests but did not perform a complete physical.

Over the next couple of weeks, Patient Heart continued to see Dr. Bad for similar complaints, including low blood pressure which Dr. Bad told him was caused by the fact that Patient Heart was in a lot of pain and he should not worry about it. Dr. Bad also performed an EKG on Patient Heart and told Patient Heart that the EKG "didn't look too bad."

Patient Heart's condition did not improve and, in fact, Patient Heart deteriorated over the next several days until he was rushed to the emergency room where he was admitted. Dr. Bad saw Patient Heart in the hospital and looked at his x-rays and said the x-rays looked "like a lot to do about nothing." Ultimately Patient Heart had to be intubated and placed on a ventilator. When he was finally taken off the ventilator several days later, he died from damage to his heart caused by a heart attack that Dr. Bad failed to diagnose.

Subsequent to his death, Patient Heart's wife filed a complaint against Dr. Bad with the Missouri State Board of Healing Arts. The Board then filed a Complaint against Dr. Bad in which it sought a determination from the Administrative Hearing Commission that the Board had cause to discipline Dr. Bad's license.

The Commission held a hearing on the Board's Complaint in June of 2001. One of the items admitted into evidence was a detailed journal by Patient Heart's wife detailing the symptoms, complaints and activities of Patient Heart immediately before and during his treatment by Dr. Bad. The journal was admitted into evidence without any objection from Dr. Bad's counsel.

The Board also presented the depositions of subsequent treating physicians. They all reported that the symptoms that Patient Heart reported to Dr. Bad were indicative of a cardiac problem. They testified that Dr. Bad should have promptly referred Patient Heart to a specialist for further testing and that his failure to do so was a breach of the standard of care, i.e., below the degree of skill and learning ordinarily used under the same or similar circumstances by members of Dr. Bad's profession.

To rebut the Board's evidence, Dr. Bad offered his own testimony and the testimony of his wife, one of his employees, an employee of a health food store adjacent to Dr. Bad's office, and one of the nurses from the hospital where Patient Heart was treated. Dr. Bad also offered the testimony of two members of the church where Patient Heart had served as a pastor before he died, that Patient Heart's wife did not have a good reputation for truthfulness.

After the hearing, the Commission entered Findings of Fact and Conclusions of Law in which it determined that cause existed to discipline Dr. Bad's license based specifically on the two counts related to his treatment of Patient Heart.

Following the entry of the Commission's Memorandum and Order, the Board held a disciplinary hearing in October of 2001 and entered Findings of Fact and Conclusions of Law and a Disciplinary Order. The Board revoked Dr. Bad's medical license.

Dr. Bad filed a Petition for Review of the Commission's Memorandum and Order and the Board's Disciplinary Order in the Circuit Court under Missouri Revised Statutes Section 536.140. After reviewing the entire record, the Circuit Court determined that the Orders of the Commission and Board were supported by competent and substantial evidence. The trial court denied Dr. Bad's Petition for Review and entered judgment in favor of the Board, affirming its findings and Order. Dr. Bad filed this appeal.

QUESTIONS

1. On Appeal, does the Court review the decision of the Commission and Board or the trial court?
2. For purposes of review, how does the appellate court treat the actions of the Commission and Board?
3. Provide five (5) reasons why the Court of Appeals might refuse to affirm the decision(s) rendered below.
4. On what basis could Dr. Bad have argued that the journal kept by Mrs. Patient Heart was inadmissible?
5. Under what circumstances may hearsay testimony be considered?
6. Dr. Bad argued that the evidence before the Commission could have led to opposed findings. How must the Court of Appeals treat evidence that could warrant either of two opposed findings?

Missouri Essay Question 4
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Remedies

Hope S. Eternal enters into a business relationship with Ron Barnum, a renowned entrepreneur, to develop and market products taking advantage of male vanity. Ron, who is putting up the money and plans to market the products throughout the Midwest, presents Hope with a written employment contract. Under the terms of the contract (for which there is adequate consideration on both sides), Hope would agree that, for five years after voluntary or involuntary termination of her employment, she will not work in the male vanity business in any state in which Ron has had more than \$1,000 in annual sales. Hope objects to the provision, but Ron assures her it is standard in the industry and that, in any event, he has no intention of enforcing it. Based on these assurances, Hope signs the contract. The contract makes no reference to confidential business information.

As one of his products, Ron has developed an aerosol product - called "Canned Coiffure" - that when sprayed onto a bald scalp might, to the less observant, pass for hair. Ron's sprayed-hair formula, which he keeps locked in a safe, is not patented. Hope thinks Canned Coiffure is an incredibly stupid idea, but the orders for Canned Coiffure, as well as for Ron's other creations, keep rolling in. Hope has discovered that most of Ron's customers are repeat customers. She also knows that Ron keeps his only complete list of his customers in a secure file in the company's computer system, and prohibits copies from being made.

After a couple of years, Hope has tired of Ron's management style and his repeated failure to pay her bonuses provided for in the contract. After giving Ron two weeks notice, Hope leaves and moves to Iowa (a state that has more than \$1,000 in annual sales), where she starts a male vanity products business. Hope develops her own aerosol hair spray for bald men and calls it "Canned Rug." Hope has determined the content of Canned Coiffure by having it analyzed at a lab, but uses some different chemical combinations in her Canned Rug product than Ron used in Canned Coiffure. Taking advantage of her photographic memory, Hope also has compiled a list of Ron's customers from memory and has been contacting them. Hope's efforts are successful and she earns substantial income from sales of Canned Rug in Iowa.

Ron's bookkeeper tells him that since Hope started her own business his sales of Canned Coiffure in Iowa have fallen by \$10,000 per month.

Ron comes to you for advice.

1. What equitable remedy or remedies can Ron pursue against Hope as a result of her business in Iowa, and what are the elements of each? As to each remedy, explain why it is likely (or unlikely) to succeed.
2. What defenses are available to Hope in response to Ron's claims and what are the elements of each?